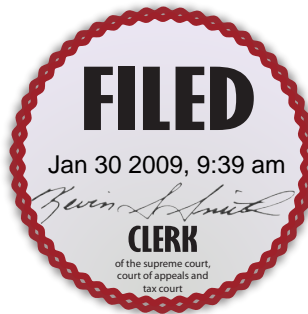


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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KASSIM AL-AWADI,  
  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
  
Appellee-Plaintiff.

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No. 49A04-0806-CR-321

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable William Nelson, Judge  
Cause No. 49F07-0801-CM-10495

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**January 30, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

Kassim Al-Awadi (“Al-Awadi”) appeals after a bench trial from his conviction of disorderly conduct,<sup>1</sup> a Class B misdemeanor. Al-Awadi presents the following restated issue for our review: whether there was sufficient evidence to support Al-Awadi’s conviction, with particular emphasis on whether his speech constituted free speech under the Indiana Constitution.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

At approximately 2:30 p.m. on January 11, 2008, Indianapolis Metropolitan Police Department Officer Brendan Smith was refueling his vehicle at a Speedway gas station in Indianapolis. Al-Awadi was at the same gas station refueling his vehicle, which was parked adjacent and parallel to Officer Smith’s vehicle. The gas station was particularly busy because the price of gasoline had dropped, and the weather had become inclement. Officer Smith noticed that Al-Awadi was glaring at him, giving him menacing looks, and appeared to be very upset. After Officer Smith asked Al-Awadi how he was doing, Al-Awadi became agitated, said that he was not doing very well, and that he had been there too long. Officer Smith, who was uncertain if Al-Awadi was making reference to the long line for gasoline or the inclement weather, asked Al-Awadi what he meant.

Al-Awadi explained that he had been in the United States too long. When Officer Smith asked Al-Awadi where he was from, he learned that Al-Awadi was from Bagdad. Officer Smith, who had served with the United States military in Iraq, responded that he had

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<sup>1</sup>See Ind. Code § 35-45-1-3(a)(2).

been there. At that point, Al-Awadi began to “rant about how the U.S. had pulled out too soon and Saddam ruined everything.” *Tr.* at 7. Officer Smith testified that Al-Awadi became more agitated and was speaking loudly enough to draw the attention of another officer who was refueling his vehicle at a different pump, patrons coming out of the convenience store, and passers-by.

Officer Smith asked Al-Awadi to lower his voice and calm down on at least three different occasions during Al-Awadi’s outburst. Al-Awadi responded by saying that he had the right to be as loud as he wanted. Al-Awadi told Officer Smith that he was an American citizen and that the officer could not tell him to lower his voice. People entering and leaving the convenience store at the gas station were stopping to look at Al-Awadi.

Officer Robert Lowe, the other officer refueling his vehicle at the gas station, was walking toward the convenience store when he heard Al-Awadi. Officer Lowe testified that it appeared that Al-Awadi was talking very loudly and making gestures with his arms. Officer Lowe noted that other people were stopping to stare at Al-Awadi. Officer Lowe became concerned and walked toward Officer Smith’s vehicle.

At about the same time, Officer Smith told Al-Awadi that he would be arrested for disorderly conduct if he did not calm down. Al-Awadi became very upset and demanded that Officer Smith write a letter to his employer, Hertz. Al-Awadi explained that he was going to be late for work due to being detained by Officer Smith for questioning. Officer Smith told Al-Awadi that he was free to leave and suggested that Al-Awadi should be on his way. Instead, Al-Awadi demanded that Officer Smith write the letter to Al-Awadi’s employer.

Officer Smith characterized Al-Awadi's behavior as belligerent, aggressive, loud, and hostile.

Officer Lowe reached Officer Smith's vehicle and heard Officer Smith tell Al-Awadi to calm down and leave. Officer Lowe characterized Al-Awadi's conversation as "pretty heated at that point." *Tr.* at 15. Officer Lowe heard Officer Smith repeatedly ask Al-Awadi to leave and observed that those requests resulted in an escalation of Al-Awadi's reaction. Officer Lowe noted that there were many people at that gas station and that most were looking in Al-Awadi's direction. Ultimately, Officers Smith and Lowe arrested Al-Awadi for disorderly conduct.

A bench trial was held on April 28, 2008, at the conclusion of which Al-Awadi was found guilty of disorderly conduct. The trial court sentenced Al-Awadi to a term of one hundred eighty days, with one hundred seventy-eight days suspended. The trial court imposed a \$40.00 fine and ordered the payment of court costs of \$200.00. Al-Awadi now appeals.

### **DISCUSSION AND DECISION**

Al-Awadi challenges the sufficiency of the evidence supporting his conviction of disorderly conduct. In particular, he challenges whether the evidence supported a finding that his speech was not "free speech" under Article 1, section 9 of the Indiana Constitution.

Our standard of review for a sufficiency of the evidence claim is well-settled. In reviewing such a claim, we will affirm the conviction unless, considering only the evidence and all reasonable inferences favorable to the judgment, and neither reweighing the evidence

nor judging the credibility of the witnesses, we conclude that no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *See Blackman v. State*, 868 N.E.2d 579, 583 (Ind. Ct. App. 2007).

Indiana Code section 35-45-1-3 provides that a person who recklessly, knowingly, or intentionally makes unreasonable noise and continues to do so after being asked to stop commits disorderly conduct, a Class B misdemeanor. Al-Awadi, who was visibly upset, began to glare at Officer Smith, who was refueling his vehicle. The gas station was packed with customers due to the inclement weather and lower gas prices. Al-Awadi proceeded to speak loudly enough to Officer Smith to attract the attention of many of the other customers and passers-by. Officer Lowe heard Officer Smith make several requests of Al-Awadi to quiet down and go about his business. Instead of complying, Al-Awadi's tone of voice and belligerence escalated to the point Officer Lowe became concerned and approached Officer Smith's vehicle. The evidence here was sufficient to support the conviction.

The question is whether Al-Awadi's speech was "free speech," and therefore, constitutionally protected political speech under Article 1, section 9 of the Indiana Constitution. In the landmark case of *Price v. State*, 622 N.E.2d 954 ( Ind. 1993), our Supreme Court held that Article 1, section 9 provides protections to Indiana citizens of the right of freedom of expression independent of its federal counterpart and that the State may not materially burden political expression, which is a core value under Indiana's Bill of Rights. The Court reversed Price's conviction holding that her loud and profanity-laced complaints about police officers conducting an arrest of a third party and then of Price herself

was political expression which the State could not materially burden.

In *J. D. v. State*, 859 N.E.2d 341 (Ind. 2007), our Supreme Court held that speech, albeit political, was not entitled to constitutional protection under Article 1, section 9 of the Indiana Constitution where the speech “consisted of persistent loud yelling over and obscuring of [the arresting officer’s] attempts to speak and function as a law officer.” *Id.* at 344. The Court, distinguishing the facts from those in *Price* concluded that the speech “clearly amounted to an abuse of the right to free speech” and thus subjected J.D. to accountability under Article 1, section 9. *Id.*

Here, Al-Awadi’s speech was partially political and partially personal. Al-Awadi was arrested after refusing to reduce the volume of his speech. Al-Awadi’s speech is precisely the kind of speech found not to be protected in *J. D.* Al-Awadi persistently spoke loudly refusing multiple requests to reduce the volume of his speech, in the face of warnings that if he did not calm down, he would be arrested for disorderly conduct. Al-Awadi abused the right to free speech and thus was subject to accountability under Article 1, section 9.

Affirmed.

BAKER, C.J., and NAJAM, J., concur.